FILED
AUG 17 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 207.

LEHIGH VALLEY RAILROAD COMPANY OF PENNSYLVANIA, a corporation, and BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, an unincorporated association,

Petitioners,

vs.

PATRICK J. DOOLEY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Non-Compliance With Rules.

The petition lacks completely the statements and references to the record required by Rule 12, paragraph 1 of this Court in order to show that a federal question was duly presented, decided and saved for review by the petitioners.

Arguments in Reply to Petitioners' Points.

Point 1 of Petitioners' brief is as follows:

> **The decision of the New Jersey Court of Errors and Appeals operates to deny to certain employees of the Lehigh Valley Railroad Company the right to bargain collectively (Petitioners' brief, at page 17).**

The question to which this point is directed was neither raised nor decided below and nothing in the petition is cited to show that it was so raised by the petitioners, or dealt with in the grounds of appeal (R. 230-239, 242-248).

It is argued that the injunction forbidding the Brotherhood to interfere with the existing contract fixing seniorities is an interference with the right of collective bargaining in the future, but the injunction has no such meaning (R. 227). If and when the Brotherhood acquires the right in the future to alter the contract it can unquestionably do so. The court did not enjoin the Brotherhood from seeking to be elected or designated as collective bargaining agent hereafter. Obviously it could not do so.

There is not a word in the case to show that the Association which had negotiated the contract for Dooley's seniority was "defunct". It was not in fact "defunct", as will be seen in the petitioners' own statement of facts (page 8), where it is shown that this "defunct" Association disputed the right of the Brotherhood to represent the clerical employees of the Railroad, and came off victorious through a dismissal of the proceedings by the National Mediation Board (Exhibit C-21, R. 351, offered in evid. R. 172). But whether it was "defunct" or not was irrelevant. It had negotiated the contract and the contract

was still subsisting. This contract had not been made with the so called "defunct" Association but had been made directly with the employees who were parties in the litigation (R. 274, Ex. C-3, offered in evidence R. 23).

Point 2 of the Petitioners' brief is as follows:

> **The decision of the New Jersey Court of Errors and Appeals adopts an erroneous construction of the Railway Labor Act, in holding that certification by the National Mediation Board is a prerequisite to the right to represent employees of a carrier (Petitioners' brief, at page 19).**

Six pages of the brief are given to the argument that it was error to hold that the Brotherhood should have been certified by the National Mediation Board as bargaining agent. One might suppose from this that the lack of a certification was the only ground relied on by the court, whereas the record shows that the court also found that the Brotherhood had never been elected or designated as bargaining agent (R. 224, 225). The absence of a certification became an unimportant matter when it was thus found that after a dispute the National Mediation Board had dismissed the proceeding without either an election or designation of the Brotherhood as bargaining agent (R. 218, 219).

The federal question whether the Brotherhood had been duly elected or designated as an agent authorized to bargain collectively for the Railroad employees was of course involved and the court decided, in the respondent's favor, that the Brotherhood had neither been elected nor designated as a bargaining agent for employees of the Railroad. This decision was never challenged by any assignment in the grounds of appeal (R. 230-239, 242-248).

Point 3 of Petitioners' brief is as follows:

> **The decree operates to impair the right and duty under Section 2 first and second of the Railway Labor Act of both the Lehigh Valley Railroad Company and its employees to settle all disputes (Petitioners' brief, at page 25).**

The question to which this point is directed was neither raised nor decided below and nothing in the petition is cited to show that it was so raised by the petitioners, or dealt with in the grounds of appeal (R. 230-239, 242-248).

This point has no relation to the facts of the case. Dooley's right of seniority was never in dispute until the Brotherhood, having no authority to do so, authorized the Railroad to abrogate Dooley's seniority. Instead of trying to "settle" a dispute the Brotherhood thus deliberately created a dispute by inducing the Railroad to commit a breach of its contract with Dooley and other employees.

Both the Brotherhood and the Railroad were therefore arrayed against Dooley and he had no recourse except by appeal to a court. Certainly the Brotherhood has no standing to invoke this federal statute when it itself was the cause of the dispute.

No federal question is presented by this point. The court below went no further than to decide the obvious fact that the Railroad and the Brotherhood had violated a plain agreement for seniority and should be enjoined from continuing to do so.

It is well settled that the question of construing the meaning and effect of a railroad's contract with its employees is one over which state courts have jurisdiction. *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630; *Teague* v. *Brotherhood of Locomotive Firemen, Etc.*, 127 F. 2nd 53,

55 (C. C. A.); *Malone* v. *Gardner*, 62 F. 2nd 15 (C. C. A.); *Parrish* v. *Chesapeake & O. Railway Co.*, 62 F. 2nd 20 (C. C. A.) cert. den. 288 U. S. 604, 77 L. Ed. 979, 53 S. Ct. 397.

Point 4 of Petitioners' brief is as follows:

> **The statement by the New Jersey Court of Errors and Appeals that the question of representation was not necessary to the determination of this case did not deprive this Court of jurisdiction under Section 237 of the Judicial Code (Petitioners' brief, at page 29).**

It is true that state courts cannot shield their erroneous decisions from review merely by asserting that a federal question is not in the case, and this dictum of the Court of Errors and Appeals of New Jersey seems to be erroneous. It was in order for the Court of Chancery to decide the federal question whether the Brotherhood had obtained authority to deal with the question of seniority by being either elected or designated as bargaining agent for the employees. As above pointed out this simple federal question whether the Brotherhood had been elected or designated as bargaining agent was not saved for review in this Court by any appropriate ground of appeal (R. 230-239, 242-248).

Conclusion.

It is, therefore, respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ should be denied.

Dated: August 14, 1942.

Respectfully submitted,

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